

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

**PARTHENON UNIFIED MEMORY
ARCHITECTURE LLC,**

Plaintiff,

v.

HTC CORPORATION, ET AL.

LG ELECTRONICS, INC., ET AL.

**HUAWEI TECHNOLOGIES CO., LTD., ET
AL.**

MOTOROLA MOBILITY LLC

Defendants.

§ **Case No. 2:14-cv-690-RSP**

§ **(Lead)**

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§ **Case No. 2:14-cv-691-JRG-RSP**

§ **(Consolidated)**

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§ **Case No. 2:14-cv-687-JRG-RSP**

§ **(Consolidated)**

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§ **Case No. 2:14-cv-689-JRG-RSP**

§ **(Consolidated)**

§

**JOINT SUBMISSION OF THE PARTIES’
PROPOSALS TO AMEND THE DOCKET CONTROL ORDER**

Pursuant to the Court’s Order dated December 17, 2014, consolidating Cause No. 2:14-cv-689 against Motorola and Cause No. 2:14-cv-687 against Huawei with Lead Case No. 2:14-cv-690 [DKT #57], Plaintiff Parthenon Unified Memory Architecture LLC (“PUMA”) and Defendants HTC Corporation and HTC America, Inc. (“HTC”); LG Electronics, Inc. and LG Electronics USA, Inc. (“LG”); Motorola Mobility LLC (“MMLLC”); and Huawei Technologies Co., Ltd., Huawei Technologies USA, Inc., and Huawei Device USA, Inc. (“Huawei”) hereby submit their proposals to amend the Docket Control Order entered on September 25, 2014 [DKT #43].¹

¹ Motorola and Huawei are filing this pursuant to the Orders consolidating Motorola and Huawei with Lead Case 2:14-cv-690. However, Motorola, Huawei direct the Court to its Unopposed Motion to Vacate Consolidation Orders and to Re-Consolidate filed on January 6, 2015 (Dkt. 75) asking the Court to re-consolidate them with the Qualcomm and Samsung action.

The parties understand the deadline for filing amendments to the Docket Control Order to be January 7, 2015, per the Court's order granting an extension of time dated January 6, 2015 [DKT #72]. The parties show good cause for the amendments as follows:

Plaintiff Parthenon Unified Memory Architecture, LLC ("PUMA") filed separate suits against Huawei (2:14-cv-687), Motorola (2:14-cv-689), HTC (2:14-cv-690) and LG (2:14-cv-691) on or about June 12, 2014, alleging infringement of the same nine (9) U.S. patents in each cause.² On August 6, 2014, this Court entered its first consolidation order, consolidating the actions against HTC Corporation ("HTC") (2:14-cv-690) and LG Electronics ("LG") (2:14-cv-691) under the lead case number 2:14-cv-690.³ HTC answered PUMA's Complaint on September 15, 2014.⁴ LG answered PUMA's Complaint on October 15, 2014.⁵ In the interim, PUMA, HTC and LG negotiated and filed case management documents (including a proposed Docket Control Order, Discovery Order, and Protective Order) that would govern the consolidated case as to those three parties, which were entered by the Court on September 25, 2014.⁶ Infringement contentions and invalidity contentions have been served and exchanged between HTC and LG and PUMA.

Motorola answered PUMA's Complaint on October 27, 2014⁷, after the case management documents as to HTC and LG were entered by the Court. Huawei likewise did not answer PUMA's Complaint until October 24, 2014. On December 17, 2014, the Court

² The patents-in-suit in each case are U.S. Patent No. 5,812,789; Patent No. 5,960,464; Patent No. 6,058,459; Patent No. 6,427,194; Patent No. 7,321,368; Patent No. 7,542,045; Patent No. 7,777,753; Patent No. 8,054,315; and Patent No. 8,681,164.

³ DKT #13 in Cause No. 2:14-cv-690.

⁴ DKT #31 in Cause No. 2:14-cv-690.

⁵ DKT #45 in Cause No. 2:14-cv-690.

⁶ DKT #37, #39 and #43 in Cause No. 2:14-cv-690.

⁷ DKT #17 in Cause No. 2:14-cv-689.

entered two additional consolidation orders,⁸ consolidating the case against Motorola (2:14-cv-689) and the case against Huawei Technologies Co. (2:14-cv-687) with the cases against HTC and LG that had previously been consolidated. No infringement contentions have been served on Motorola or Huawei, and accordingly, neither Motorola nor Huawei have served invalidity contentions upon PUMA. Furthermore, no discovery has yet been exchanged between PUMA and Motorola or Huawei.

Under the facts outlined above, the parties hereby submit competing proposals for amending the Docket Control Order in order to reasonably adjust the schedule to accommodate the addition of Motorola and Huawei.

Plaintiff's Proposal

In view of Defendants' proposal to move all dates—including the *Markman* hearing and trial date—by five months, PUMA submits its own proposal that seeks to reasonably accommodate the addition of Huawei and Motorola while maintaining the *Markman* and trial dates. PUMA's proposal further takes into account: (1) that both Huawei and Motorola filed their Answers in October and have had several months to prepare their defenses, and (2) that their participation in a joint defense group with LG and HTC will assist them in meeting any deadlines imposed by the Court.

As outlined in the chart below, PUMA proposes to serve infringement contentions to Motorola and Huawei by January 20, 2015. In turn, Huawei and Motorola would serve their invalidity contentions six weeks later on March 3, 2015. Given that Huawei and Motorola both filed Answers in October and have known of the accused patents since last June, a March deadline for invalidity contentions would not prejudice either party.

⁸ DKT #20 in Cause No. 2:14-cv-689; DKT #24 in Cause No. 2:14-cv-687; DKT #57 in Cause No. 2:14-cv-690.

With respect to claim construction, PUMA proposes that the parties comply with P.R. 4-1 (the exchange of proposed claim terms) on February 10, 2015, over two weeks after Huawei and Motorola receive PUMA's infringement contentions. Additionally, PUMA proposes that the parties comply with P.R. 4-2 (the exchange of preliminary claim constructions) on February 24, 2015, and file the Joint Claim Construction Statement under P.R. 4-3 on March 10, 2015. This schedule preserves the current *Markman* hearing date while providing Huawei and Motorola with an opportunity to review PUMA's infringement contentions. Additionally, as with the invalidity contentions, Huawei and Motorola will have the advantage of integrating and adapting LG and HTC's current efforts toward the claim construction deadlines.

Lastly, PUMA has included a deadline for Motorola and Huawei to file motions to transfer on February 3, 2015. Given HTC and LG's decision to delay moving to transfer until six months after PUMA filed its Complaints, a deadline to file transfer motions would prevent further delay and reduce the risk of any prejudice to PUMA. For the above reasons, PUMA respectfully requests that the Court adopt its proposed schedule below, which retains both the current *Markman* hearing and trial dates.

Alternatively, in the event the Court is of the judgment that more time is needed to accommodate Huawei and Motorola, PUMA respectfully directs the Court's attention to the parties' pending Unopposed Motion to Vacate (Dkt. 75), which seeks to have Huawei and Motorola consolidated with the pending actions against Samsung and Qualcomm. Given that those cases are set for a scheduling conference this month, PUMA and the added Defendants have suggested an alternative proposal to consolidate the actions against Huawei and Motorola with Samsung and Qualcomm. This alternative proposal would satisfy any scheduling concerns held by Huawei or

Motorola while avoiding any delay in the HTC and LG actions and allowing those parties to continue their progress toward an expedient resolution of their claims.

Defendants' Proposal

As an initial matter, Motorola and Huawei *agree* with PUMA's alternative proposal to sever Motorola and Huawei from the HTC/LG case and re-consolidate those parties with Samsung and Qualcomm. *See* Dkt. No. 75, Unopposed Motion to Vacate Consolidation Orders and to Re-consolidate. That course of action would satisfy the scheduling concerns raised by Motorola and Huawei here. And because PUMA has yet to serve infringement contentions on Motorola and Huawei, the Motorola-Huawei posture is much more akin to the current Samsung-Qualcomm posture.

But if the Court declines to grant Huawei and Motorola's motion to consolidate with the Samsung and Qualcomm cases, then the schedule proposed by the Defendants should be adopted because it is fair and reasonable for all parties in this action, given the complexity of these cases and their current posture. PUMA has asserted nine patents against numerous Motorola and Huawei products. Yet as noted above, PUMA has yet to serve infringement contentions on Motorola and Huawei at this point, and so neither Motorola nor Huawei has been provided with a list of asserted claims, a list of accused products and model numbers,⁹ or charts mapping the accused functionality to the asserted claims. That information is necessary for Motorola and Huawei to fully develop their non-infringement and invalidity defenses. Once Motorola and Huawei have been provided with that information, they should be permitted the full amount of time to meet the various

⁹ PUMA's Complaint identifies product names only, not specific models which may have different application processors.

deadlines under the local patent rules while still maintaining the Court's relatively quick docket pace. Defendants' proposed schedule reflects their efforts to achieve those goals.¹⁰

PUMA's proposal, on the other hand, places an unreasonable burden on the parties. PUMA's proposal changes only four (4) of the numerous thirty-day deadlines and as a result forces Huawei and Motorola into an overly burdensome schedule given the complexities of this case. PUMA has asserted nine patents against numerous Motorola and Huawei products. Based on the infringement contentions served on HTC and LG, the accused functionality in Motorola and Huawei products resides within third party application processors.¹¹ Thus, discovery will be required to ascertain the structure, function, and operation of these third party processors vis-à-vis the numerous claims that will likely be asserted against Motorola and Huawei.

Yet as mentioned above, Motorola and Huawei still do not know which claims are asserted, which specific product models are at issue, or what specific components and functions are accused of infringing any of the nine asserted patents. That has fundamentally limited Motorola and Huawei's ability to fully formulate their defenses. Despite that, PUMA proposes give Motorola and Huawei only six weeks to serve invalidity contentions after receiving infringement contentions in this undeniably complex case instead of the eight weeks given to LG and HTC. PUMA would also require Motorola and Huawei to exchange proposed claim constructions *before* Motorola and Huawei have served their invalidity contentions, instead of after those contentions, as contemplated by the local patent rules. In short, PUMA's proposed schedule simply fails to account for the overarching complexity of these cases and their current posture. Thus, if the Court decides not to sever Motorola and Huawei from the HTC-LG track and re-consolidate them with

¹⁰ While Defendants would have been more than willing to negotiate the schedule with PUMA, only today – the day of the filing – did Defendants receive any proposal of a schedule from PUMA.

¹¹ Cause No. 14-cv-00690 Dkt. Nos. 54, 60.

Qualcomm and Samsung, then the Court should adopt the Defendants' proposed schedule below which fairly balances the complexity and posture of this case while also maintaining this Court's docket pace.

LG and HTC agree with the Defendants' proposal, but as stated in the parties' Notice of Related Cases [DKT #68 in Cause No. 2:14-cv-690], believe that judicial economy would be best served by consolidating Plaintiff's currently consolidated cases under Lead Case Nos. 2:14-cv-690 and 2:14-cv-902 under one lead case and with an appropriate schedule that balances the interests of all parties. Piecemeal analysis of common issues such as the validity and infringement of the asserted claims to the extent PUMA relies on functionality in Qualcomm chips against the various defendants, does not favor judicial economy. A single consolidated schedule for analysis of the issues is logical and appropriate. Further, LG and HTC believe that to the extent a revised date for compliance with P.R. 3-3 and 3-4 (exchange of invalidity contentions) is established, LG and HTC reserve the right to rely on the contentions exchanged on that revised date in their invalidity case.

EVENT / ACTIVITY	CURRENT DEADLINE	PLAINTIFF'S PROPOSAL	DEFENDANTS' PROPOSAL
*Jury Selection – 9:00 a.m. in Marshall, Texas	December 14, 2015	Current Deadline	May 9, 2016
*Pretrial Conference – 9:00 a.m in Marshall, Texas before Judge Roy Payne	November 5, 2015	Current Deadline	March 31, 2016
<p>*Notify Court of Agreements Reached During Meet and Confer</p> <p>The parties are ordered to meet and confer on any outstanding objections or motions <i>in limine</i>. The parties shall advise the Court of any agreements reached no later than 1:00 p.m. three (3) business days before the pretrial conference.</p>	October 28, 2015	Current Deadline	March 23, 2016
*File Joint Pretrial Order, Joint Proposed Jury Instructions, Joint Proposed Verdict Form, and Responses to Motions <i>in Limine</i>	October 26, 2015	Current Deadline	March 21, 2016
<p>*File Notice of Request for Daily Transcript or Real Time Reporting.</p> <p>If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and e-mail the Court Reporter, Shelly Holmes, at shelly_holmes@txed.uscourts.gov.</p>	October 19, 2015	Current Deadline	March 14, 2016

EVENT / ACTIVITY	CURRENT DEADLINE	PLAINTIFF'S PROPOSAL	DEFENDANTS' PROPOSAL
<p>File Motions <i>in Limine</i></p> <p>The parties shall limit their motions <i>in limine</i> to issues that if improperly introduced at trial would be so prejudicial that the Court could not alleviate the prejudice by giving appropriate instructions to the jury.</p>	October 12, 2015	Current Deadline	March 7, 2016
Serve Objections to Rebuttal Pretrial Disclosures	October 12, 2015	Current Deadline	March 7, 2016
Serve Objections to Pretrial Disclosures; and Serve Rebuttal Pretrial Disclosures	October 5, 2015	Current Deadline	February 29, 2016
Serve Pretrial Disclosures (Witness List, Deposition Designations, and Exhibit List) by the Party with the Burden of Proof	September 21, 2015	Current Deadline	February 15, 2016
<p>*File Dispositive Motions or Motions to Strike Expert Testimony (including <i>Daubert</i> Motions)</p> <p>No dispositive motion or motion to strike expert testimony (including a <i>Daubert</i> motion) may be filed after this date without leave of the Court.</p>	August 24, 2015	Current Deadline	January 18, 2016
Deadline to Complete Expert Discovery	August 17, 2015	Current Deadline	January 11, 2016
Serve Disclosures for Rebuttal Expert Witnesses	August 3, 2015	Current Deadline	December 28, 2015
Deadline to Complete Fact Discovery and File Motions to Compel Discovery	July 1, 2015	Current Deadline	November 25, 2015

EVENT / ACTIVITY	CURRENT DEADLINE	PLAINTIFF'S PROPOSAL	DEFENDANTS' PROPOSAL
Serve Disclosures for Expert Witnesses by the Party with the Burden of Proof	July 13, 2015	Current Deadline	December 7, 2015
*Deadline to File Letter Briefs Regarding Dispositive Motions	June 29, 2015	Current Deadline	November 23, 2015
Deadline to Complete Mediation The parties are responsible for ensuring that a mediation report is filed no later than 5 days after the conclusion of mediation. <i>See</i> L.R. App. H.	June 16, 2015	Current Deadline	November 10, 2015
Comply with P.R. 3-7 (Opinion of Counsel Defenses)	June 9, 2015	Current Deadline	November 3, 2015
*Claim Construction Hearing – 9:00 a.m. in Marshall, Texas before Judge Roy Payne	May 19, 2015	Current Deadline	October 13, 2015
*Comply with P.R. 4-5(d) (Joint Claim Construction Chart)	May 5, 2015	Current Deadline	September 29, 2015
*Comply with P.R. 4-5(c) (Reply Claim Construction Brief)	April 28, 2015	Current Deadline	September 22, 2015
Comply with P.R. 4-5(b) (Responsive Claim Construction Brief)	April 21, 2015	Current Deadline	September 15, 2015
Comply with P.R. 4-5(a) (Opening Claim Construction Brief) and Submit Technical Tutorials (if any)	April 7, 2015	Current Deadline	September 1, 2015

EVENT / ACTIVITY	CURRENT DEADLINE	PLAINTIFF'S PROPOSAL	DEFENDANTS' PROPOSAL
<p>Deadline to Substantially Complete Document Production and Exchange Privilege Logs</p> <p>Counsel are expected to make good faith efforts to produce all required documents as soon as they are available and not wait until the substantial completion deadline.</p>	April 7, 2015	Current Deadline	September 1, 2015
Comply with P.R. 4-4 (Deadline to Complete Claim Construction Discovery)	March 24, 2015	Current Deadline	August 18, 2015
File Response to Amended Pleadings	March 17, 2015	Current Deadline	August 11, 2015
<p>*File Amended Pleadings</p> <p>It is not necessary to seek leave of Court to amend pleadings prior to this deadline unless the amendment seeks to assert additional patents.</p>	March 3, 2015	Current Deadline	July 28, 2015
Comply with P.R. 4-3 (Joint Claim Construction Statement)	February 24, 2015	March 10, 2015	July 21, 2015
Comply with P.R. 4-2 (Exchange Preliminary Claim Constructions)	February 3, 2015	February 24, 2015	July 28, 2015
Comply with P.R. 4-1 (Exchange Proposed Claim Terms)	January 13, 2015	February 10, 2015	June 9, 2015
Deadline for Motions to Transfer	No Current Deadline	February 3, 2015	
Comply with P.R. 3-3 & 3-4 (Invalidity Contentions)	November 24, 2014	March 3, 2015 (for Motorola and Huawei)	April 20, 2015

EVENT / ACTIVITY	CURRENT DEADLINE	PLAINTIFF'S PROPOSAL	DEFENDANTS' PROPOSAL
Comply with P.R. 3-1 &3-2 (Infringement Contentions)	September 29, 2014	January 20, 2015 (for Motorola and Huawei)	January 30, 2015

Dated: January 13, 2015

Respectfully submitted,

/s/ Michael McBride

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on January 13, 2015.

/s/ Michael McBride